

Paul A. Scrudato
SCHIFF HARDIN LLP
666 Fifth Avenue, 17th Floor
New York, New York 10103
Telephone: (212) 753-5000
Attorneys for Defendant The Port Authority of New York and New Jersey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE SEPTEMBER 11 PROPERTY
DAMAGE AND BUSINESS LOSS
LITIGATION

21 MC 101 (AKH)

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC., et al.,

02 CV 7188 (AKH)

Plaintiffs,

-against-

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY,

Defendant.

**STATEMENT OF UNCONTESTED
MATERIAL FACTS IN SUPPORT OF THE
PORT AUTHORITY OF NEW YORK AND
NEW JERSEY'S MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Local Civil Rule 56.1, The Port Authority of New York and New Jersey (the "Port Authority") hereby submits the following Statement of Uncontested Material Facts:

A. The Chain of Events on 9/11

1. In the early morning hours of September 11, 2001, nineteen terrorists passed through security at three major U.S. airports and boarded four planes scheduled to fly across country to Los Angeles. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 1-4.

2. The terrorists' plan was "to hijack these planes and turn them into large guided missiles, loaded with up to 11,400 gallons of jet fuel." *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 4.

3. The terrorists hijacked all four planes, using weapons they had brought on board. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 4-14.

4. Two of the highjacked planes, diverted in mid-flight, headed for New York at a very low altitude. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 6-8.

5. Five terrorist highjackers deliberately crashed American Airlines Flight 11 into the North Tower of the World Trade Center (Tower 1) at 8:46 a.m. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 7.

6. Five other terrorist highjackers deliberately crashed United Airlines Flight 175 into the South Tower of the World Trade Center (Tower 2) at 9:03 a.m. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) 1 at 8.

7. Towers 1 and 2 were set ablaze by burning jet fuel. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 285, 294-95.

8. Tower 2 collapsed at 9:58 a.m. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 305.

9. Tower 1 collapsed at 10:28 a.m. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 311.

10. Nearly three thousand people were killed. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 311.

11. Three hundred and forty-three of the fatalities were FDNY firefighters and officials. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 311.

12. Seventy-seven Port Authority employees lost their lives, thirty-seven of whom were Port Authority Police Officers. *See* Klein Decl. Exh. 1 (The 9/11 Commission Report) at 311.

13. Large chunks of burning debris from the collapse of Tower 1 rained down on World Trade Center 7 (“WTC7”), located across the plaza hundreds of feet to the north. *See* Klein Decl. Exh. 2 (photos of debris from the collapse of WTC1 raining down on WTC7) and Exh. 3 (depiction of World Trade Center site).

14. First Deputy Commissioner Frank Cruthers, a 40-year veteran of the FDNY who on September 11 had overall command at the World Trade Center until the early afternoon, testified that WTC7 “looked like it had been bombarded with large, heavy objects.” *See* Klein Decl. Exh. 4 (May 12, 2009 deposition of Frank Cruthers) at 7-8, 19, 34, 40-41.

15. Tiernach Cassidy, a firefighter who observed the south face of WTC7 while rescuing survivors on the pile, recalled that the south face was pierced by an I-beam which caused a “gaping” 10x20 foot hole in WTC7. *See* Klein Decl. Exh. 5 (May 15, 2009 deposition of Tiernach Cassidy) at 22-23, 25-27, 34-35.

16. Battalion Chief Christopher Boyle, a 25-year veteran of the FDNY, recalled seeing a large “gouge out of the building ... [p]robably about five stories”, which looked like “something hit the building . . . it was like the hull of a ship.” *See* Klein Decl. Exh. 6 (June 1, 2009 deposition of Christopher Boyle) at 6-7, 14-16, Boyle -1.

17. FDNY Captain Anthony Varriale saw “extensive” damage to the south face of the building, holes “from five feet wide to maybe two or three floors . . . as if debris hit the front of the building and knocked out the walls and windows.” Varriale also saw extensive damage to the southwest corner, with “anywhere from 10 to 15 floors gone, the corner I-beam missing and the walls completely gone and the interior, you could see the interior of each floor.” *See* Klein Decl. Exh. 7 (June 9, 2002 deposition of Anthony Varriale) at 7, 27-29, 34-35, 40-42, 45-46.

18. FDNY Chief of Department Peter Hayden, now retired after 36 years of service, recalled seeing “a bulge in the southwest corner of World Trade Center 7” several floors high, which he described as “obvious” structural damage. *See* Klein Decl. Exh. 8 (May 20, 2009 deposition of Peter Hayden) at 6-7, 10-12, 17-18.

19. Captain Rudolph Weindler, then an FDNY Lieutenant with over 20 years of experience, described the “big-time damage to the building” he observed from outside the building. Weindler also testified that while searching in WTC7 for trapped victims, he saw a “[b]ig piece of wall missing and a big piece of floor missing, almost as if - in my mind, I think of a gouge out of a building, . . . as if somebody had taken a front-end loader and dug into the building, dug down through the floor and pulled it out. . . . At the time, I could only assume that something very large and heavy had fallen into that section of the building and removed a big piece of wall and floor.” *See* Klein Decl. Exh. 9 (May 6, 2009 deposition of Rudolph Weindler) at 9, 65, 91-95, 256-57.

20. Richard Rotanz, an FDNY veteran assigned to the Office of Emergency Management headquartered in WTC7, described large “craters” and “gaping holes” along the south face of WTC7. Rotanz also observed large columns and beams inside WTC7 which, given their size and appearance, he concluded had been projected into WTC7 from the collapsed towers. *See* Klein Decl. Exh. 10 (May 14, 2009 deposition of Richard Rotanz) at 9-10, 24-25, 30-31, 36-39, 51-56, 61-62.

21. Firefighter John Spiech, who entered WTC7 around 11:00 a.m. to rescue victims in the building, recalled that on about the 10th floor, as he proceeded south in a bathroom on the south side of the building, “the building ended, sheared off. . . . As the smoke lifted, I looked

down and could see the street.” *See* Klein Decl. Exh. 11 (May 17, 2009 deposition of John Spiech) at 8-9, 24-25, 41-42, 50-54.

22. The debris from Tower 1 ignited fires on multiple floors of the building that burned throughout the day. *See* Klein Decl. Exh. 12 (June 11, 2009 deposition of Daniel Nigro) at 27. *See also* Klein Decl. Exh. 13 (May 4, 2009 deposition of Thomas Johnson) at 48-49 (Port Authority Police Officer Johnson testified: “What I remember is when we came back out hearing the popping, I looked up and I saw fire. . . . I want to say the whole entire face. . . . It could have been half of it, it could have been all of it, but I saw enough of it to make me start running pretty quick . . . The east [façade] was fully engulfed.”); Exh. 14 (April 28, 2009 deposition of Richard Smith) at 76-77 (Con Ed employee Smith testified: “[I]t seemed like [the building] was engulfed, upper floors. . . . [A] lot of smoke, a lot of fire.”); Exh. 15 (photos showing the fires in WTC7 on 9/11).

23. Chief Daniel Nigro, then Chief of Operations for the FDNY, testified that: “At various times in the day I would say there was more fire in [7WTC] than I have seen in my career in a high-rise building other than, of course, 1 and 2 World Trade Center. Which would have been fantastic to see on any other day. On that day it didn’t seem that fantastic anymore because we had already seen more, but certainly there was considerable fire in various locations which was also unusual to have. Under normal conditions a fire starts at one floor and works its way up and you might have a few floors of fire if the fire department can’t get a handle on it. It is rare that you see fires on noncontiguous floors in a high-rise.” *See* Klein Decl. Exh. 12 (June 11, 2009 deposition of Daniel Nigro) at 27.

24. The debris damage from Tower 1 disrupted fire barriers inside WTC7, enabling fires to travel throughout the building unimpeded by the destroyed safety structures, and defeated

other aspects of the building's fire system as well, rendering sprinklers inoperable and making ordinary firefighting efforts impossible. *See* Klein Decl. Exh. 16 (October 15, 2010 expert report of Dr. Craig Beyler of Hughes Associates) ¶ 3.1 at 27 ("The loss of fire separations on the south face and broken sprinkler piping crippled both the passive and active protection systems relied upon to provide building protection. Fire sprinkler protection to the entire building was lost and the ability to prevent floor-to-floor fire spread was lost on the south face of WTC7."); Exh. 17 (photos showing the damage to the perimeter wall at WTC7); Exh. 9 (May 6, 2009 deposition of Randolph Weindler) at 229 ("In an undamaged high-rise structure in New York City where the building is designed to prevent fire from spreading from one floor upwards to another, it's designed to do that. In a building that has structural damage, all bets are off.").

25. The FDNY chose not to fight the fires in WTC7 because of concerns regarding the impact of the debris from the collapsed towers on the structural stability of WTC7, the limited resources available after the tragic loss of firefighters and tremendous loss of equipment that had already occurred that day, and the need to focus primary efforts on search and rescue operations at other areas of the WTC site. *See* Klein Decl. Exh. 4 (May 12, 2009 deposition of Frank Cruthers) at 19, 24-30, 32-39, 70-71, 152-156; Exh. 8 (May 20, 2009 deposition of Peter Hayden) at 19; Exh. 12 (June 11, 2009 deposition of Daniel Nigro) at 16-22, 35-36, 41-45; Exh. 18 (May 19, 2009 deposition of Division Commander Terrence Roche) at 10, 23-26, 45-46, 57; Exh. 19 (May 21, 2009 deposition of Chief Allen Hay) at 6-7, 46-47, 53-54.

26. Essential water mains were broken when the Twin Towers collapsed, and significant damage had been done to the water supply in the area. *See* Klein Decl. Exh. 4 (May 12, 2009 deposition of Frank Cruthers) at 30-31.

27. There was no pressure in the hydrants or in the standpipes in WTC 7. *See* Klein Decl. Exh. 6 (June 1, 2009 deposition of Christopher Boyle) at 13 (“there was no pressure in the hydrants”); Exh. 9 (May 6, 2009 deposition of Rudolph Weindler) at 76-77, 88-89 (“without any water in the standpipe, I’m pretty much resigned that I’m not putting much fire out here”).

28. WTC7 collapsed at 5:20 p.m., destroying Con Ed’s substation. *See* Klein Decl. Exh. 20 (July 27, 2009 Order and Opinion granting summary judgment in favor of the Port Authority and against Con Ed) at 1 (“On September 11, 2001, at 5:20 p.m., 7WTC collapsed, brought down by the raging fires created by the terrorist-related crashes of fuel-laden jumbo jets into Towers One and Two of the World Trade Center complex. The collapse of the 7WTC utterly destroyed the Con Edison substation beneath it.”); Exh. 21 (September 23, 2011 Order and Opinion granting summary judgment in favor of 7WTC Co. and Citigroup and against Con Ed) at 2.

29. The Con Ed substation suffered damage prior to the collapse of WTC7. *See* Klein Decl. Exh. 22 (August 16, 2007 deposition of Lenwood Smith) at 18, 133-134, 150, 153-154, 202-203 (Smith, a Con Ed substation employee, testified that he was concerned for his safety because he was quite sure that dust and debris had entered the transformer vaults); Exh. 23 (Con Ed World Trade Center Disaster Recovery report) at 5 (reporting on Con Ed Chairman’s Conference Call at 15:20: “Fire Department giving up on fire at 7 World Trade Center. Sub-Station doors that were closed when we left are now open. Dust and debris getting into substation could cause short circuits (Similar to what happened at Seaport) - consider shutting down the entire area. We may lose additional networks.”); Exh. 24 (November 15, 2007 deposition of Frederick Simms) at 31-32, 122-123, 161-162, 170 (Simms, Con Ed’s “white hat” on 9/11, testified that in 1991 Con Ed “lost the whole [South Street Seaport] substation because debris from the fire got all over the place and caused the whole substation to trip”).

30. In 1968 the Port Authority and Con Ed entered into a 50-year ground lease for the construction of an electrical substation on a parcel of land owned by the Port Authority located at Washington and Barclay streets in lower Manhattan. *See* Klein Decl. Exh. 25 (May 29, 1968 Agreement of Lease between the Port Authority and Con Ed) at Section 4, Exh. A.

31. The Port Authority/Con Ed lease reserved to the Port Authority the right to construct a building over the substation. *See* Klein Decl. Exh. 25 (May 29, 1968 Agreement of Lease between the Port Authority and Con Ed) at Section 8.

32. The Port Authority exercised its construction right under the Con Ed lease in 1980 when it contracted with 7 World Trade Company (“7WTC”), a Silverstein company, to build an office tower, WTC7, above and around the substation. *See* Klein Decl. Exh. 26 (December 31, 1980 Agreement of Lease between the Port Authority and 7 World Trade Company) at Section 4.

33. Under the Port Authority/7WTC. lease, the Port Authority retained ownership of WTC7 and leased the building to 7WTC. *See* Klein Decl. Exh. 26 (December 31, 1980 Agreement of Lease between the Port Authority and 7 World Trade Company) at Section 1.

B. The Citigroup EBS and Con Ed’s Speculative Theories of Collapse.

34. Citigroup’s predecessor, Salomon Inc. (“Citigroup”), leased approximately half of the space in WTC7 pursuant to a lease with 7WTC. dated November 23, 1988, to which the Port Authority consented. *See* Klein Decl. Exh. 33 (November 23, 1988 Lease between 7 World Trade Company and Salomon Inc.) and Art. 2; Exh. 34 (November 23, 1988 Consent Agreement between the Port Authority and Salomon Inc.).

35. In order to service its 24-hour 7-day-a-week trading floor operations, Citigroup installed an emergency back-up system (“EBS”), designed by its professionals, consisting of nine diesel emergency generators on the fifth floor of WTC7 and a fuel supply system connected

to two 6,000 gallon fuel tanks under the loading dock of WTC7. *See* Klein Decl. Exh. 35 (February 5, 2009 deposition of David Cooper) at 46, 55, 84, 302-12, 330-32. *See also* Exh. 21 (September 23, 2011 Order and Opinion granting summary judgment in favor of 7WTCO. and Citigroup and against Con Ed) at 8.

36. Citigroup's alterations to its space, including its emergency back-up system ("EBS"), were reviewed and approved by the Port Authority, following certification by Citigroup's professionals that they were Code compliant. *See* Klein Decl. Exh. 36 (November 23, 1988 Three Party Agreement by and among the Port Authority, 7 World Trade Company, and Salomon Inc.) Sections 5 to 7; Exh. 37 (March 1984 edition of Port Authority Tenant Construction Review Manual); Exh. 38 (Salomon May 1989 Tenant Alteration Application); Exh. 35 (February 5, 2009 deposition of David Cooper) at 312, 342-44, Cooper-18.

37. Con Ed claims that the Port Authority was negligent in approving the Citigroup EBS, principally because the system did not have an automatic shut-off mechanism. *See* Klein Decl. Exh. 39 (Con Ed June 15, 2009 memorandum in opposition to summary judgment in favor of the Port Authority) at 8-9 (Port Authority approved a system "that would not automatically shut off the fuel pumps in the event of a leak. . . . If there were a break in the single-walled piping running along the fifth floor, the contents of the fuel tanks would continue to be pumped through that break or leak onto the fifth floor because the system had been designed without an automatic shut off mechanism that would have cut off the fuel pump in the event of such a leak."); Exh. 40 (Con Ed February 1, 2010 memorandum in opposition to summary judgment motion by 7WTCO.) at 31 (same); Exh. 41 (February 11, 2010 expert report of Kenneth Elovitz of Energy Economics). Con Ed also claims that the Citigroup EBS was defective because the pipes on the fifth floor contained more diesel fuel than allowed under the Code (an extra 250 gallons,

according to Con Ed) and because the fifth floor would have required sprinklering if properly classified as a “generating plant.” *See* Klein Decl. Exh. 39 at 7-8; Exh. 40 at 30-31; Exh. 41 at 3-4, 8. *See also* Klein Decl. Exh. 42 (Con Ed 2002 Complaint against Citigroup filed on September 10, 2004); Exh. 43 (Con Ed Second Amended Complaint against Citigroup filed on July 11, 2008).

38. Con Ed speculates that a breach in Citigroup’s fuel pipes caused thousands of gallons of diesel fuel to flow onto the fifth floor of WTC7 on September 11, 2001, ultimately ignite, and weaken a massive transfer truss. *See* Klein Decl. Exh. 41 (February 11, 2010 expert report of Kenneth Elovitz of Energy Economics) at 7, 10. (“The *logical explanation* for the missing fuel is that it was pumped onto the floor of the 5th floor due to a pipe break. . . . *It appears that* a pipe break or other substantial leak resulted in thousands of gallons of fuel oil being pumped onto the floor of the 5th floor.”) (emphasis added); Exh. 44 (March 15, 2010 supplemental expert report of Kenneth Elovitz of Energy Economics) at 7 (“A leak or break in the SSB [Salomon] fuel piping system *cannot be ruled out*. . . . [I]t is *more than reasonable to conclude* that if the generators started (*as would be expected*) and a pipe did break (*as could reasonably have happened*), the generators *could have* provided power to the fuel transfer pump for long enough for that pump to pump the unaccounted fuel onto the floor of the SSB standby power plant where it was consumed in the ensuing fire.”) (emphasis added); *See also* Klein Decl. Exh. 39 (Con Ed June 15, 2009 memorandum in opposition to summary judgment in favor of the Port Authority) at 7, 9-10 (“Evidence discovered thus far *suggests* that between 10,000 and 12,000 gallons of diesel fuel leaked onto the fifth floor of WTC7 on September 11, 2001 and that this leakage *likely* ignited fires of such high temperatures and for such a duration that they compromised the strength of the transfer trusses Evidence *suggests* that this happened on September 11,

2001 with disastrous results. . . . Given the high noise level of the generators, *the only reasonable conclusion* is that the generators were not operating at that time because they had run out of fuel. ... In short, the available evidence *suggests* that there was a leakage of between 10,000 and 12,000 gallons of diesel fuel onto the fifth floor of WTC7. The *logical inference* is that this fuel ignited, resulting in fires of high temperature and long duration.”) (emphasis added); Exh. 40 (Con Ed February 1, 2010 memorandum in opposition to summary judgment motion by 7WTC Co.) at 29-30 (“*There is little doubt that* between 7,350 and 9,300 gallons of diesel fuel was pumped onto the fifth floor of 7WTC on September 11, 2001. . . . [T]he volume of fuel from the tanks that the generators did not consume (between 7,350 and 9,300 gallons) *must have been* pumped onto the fifth floor through a leak or pipe break Such fires *would have been* of such high temperatures and lasted for such duration that they compromised the strength of the transfer trusses, caused their failure and ultimately caused the collapse of 7WTC onto the Substation. . . .”) (emphasis added).

39. No one inside WTC7 after the collapse of WTC1 testified that they saw or smelled diesel fuel on the fifth floor.

40. FDNY veteran Richard Rotanz, who walked the fifth floor at about 12:30 p.m., testified, when asked if he smelled diesel fuel, that “the only thing we smelled was dust.” *See* Klein Decl. Exh. 10 (May 14, 2009 deposition of Richard Rotanz) at 36, 47.

41. Salomon security officer Colvin Cox, who entered the fifth floor following the evacuation of WTC7, testified that he did not smell any diesel fuel, noting that if he had smelled diesel fuel that would be something he would have remembered. *See* Klein Decl. Exh. 45 (July 31, 2007 deposition of Colvin Cox) at 262-64.

42. Salomon Chief of Security Peter Mulroy, who was on the lower floors around noon, testified that he did not smell any diesel fuel. *See* Klein Decl. Exh. 46 (August 27, 2007 deposition of Peter Mulroy) at 36, 209-10.

43. Firefighter John Speich, who at about 11 a.m. was on the lower floors, testified that he did not smell any diesel fuel: “I do know the smell of diesel fuel and I don’t recall smelling diesel fuel.” *See* Klein Decl. Exh. 11 (May 17, 2009 deposition of John Speich) at 24, 30-33.

44. Firefighter Anthony Zeolla, who inspected the interior of WTC7 to approximately the twentieth floor, testified that he did not smell diesel fuel oil at any point on his way up or down the stairs. *See* Klein Decl. Exh. 47 (June 18, 2009 deposition of Anthony Zeolla) at 27, 39-40, 54.

45. No one inside WTC7 after the collapse of WTC1 testified that they smelled any burning diesel fuel.

46. FDNY Chief Allen Hay, who has extensive experience with diesel fuel fires and who was at WTC7 three different times throughout the day to evaluate the fires, including their source, testified that he did not smell anything that indicated burning diesel fuel. *See* Klein Decl. Exh. 19 (May 31, 2009 deposition of Allen Hay) at 80-81.

47. Then FDNY Lieutenant Rudolph Weindler, who climbed to the 11th floor of WTC7, testified that he did not smell burning fuel inside the building. *See* Klein Decl. Exh. 9 (May 6, 2009 deposition of Rudolph Weindler) at 102.

48. FDNY Captain Anthony Varriale testified that during his time in the building he did not smell anything that suggested to him the presence of burning diesel fuel. *See* Klein Decl. Exh. 7 (June 9, 2002 deposition of Anthony Varriale) at 36-37.

49. FDNY Chief Butch Brandes testified that burning diesel fuel oil has a distinctive odor but does not “remember anything sticking out in my mind saying, it smells like this or it smells like that, and I don’t remember . . . discussing it, because . . . if [I and others in the building with me] had seen or heard something distinctive, we probably would have discussed it and I don’t recall us ever discussing anything about smoke, other than there was smoke.” *See* Klein Decl. Exh. 48 (July 14, 2009 deposition of Barry Brandes) at 53-54.

50. FDNY Battalion Chief Christopher Boyle testified that he did not smell diesel fuel fires when he was standing adjacent to WTC7 on 9/11. *See* Klein Decl. Exh. 6 (June 1, 2009 deposition of Christopher Boyle) at 21.

51. No firefighter testified that thick black smoke meant that the fire in WTC7 was a diesel fuel fire.

52. FDNY Captain Anthony Varriale testified that: “[T]oday it is very common in fact almost 100 percent of the time when we respond to fires we have heavy black smoke because of the heavy introduction of plastics into everything. Furniture, and utilities, cabinets, everything is made of plastics which is carbon based.” Varriale also testified that he saw heavy black smoke but nothing that indicated there was a diesel fuel fire in WTC7. *See* Klein Decl. Exh. 7 (June 9, 2009 deposition of Anthony Varriale) at 50, 57, 60-61.

53. Firefighter Mark Giannini testified that black smoke can come from “any type of plastic. Furniture in this room, carpet, if there is plastic chairs instead of leather, that will cause it. Computers. Any of the plastic gadgets that are on the table it causes black smoke.” *See* Klein Decl. Exh. 49 (June 29, 2009 deposition of Mark Giannini) at 18.

54. FDNY Captain Philip Ruvolo testified that he concluded from the color of the smoke that “it was a typical office building fire. Black in that there are plenty of plastics and synthetics.” *See* Klein Decl. Exh. 50 (June 12, 2009 deposition of Philip Ruvolo) at 14.

55. FDNY Chief Hayden testified that he never concluded that there was a diesel fuel fire in WTC7 on September 11. *See* Klein Decl. Exh. 8 (May 20, 2009 deposition of Peter Hayden) at 41.

56. FDNY Lieutenant Joseph Meola testified that although he saw smoke that grew darker, he had “no idea what was burning inside the building.” *See* Klein Decl. Exh. 53 (June 24, 2009 deposition of Joseph Meola) at 29.

57. Con Ed’s own experts have acknowledged that ordinary office contents fires are the most likely cause of the collapse of WTC7. *See, e.g.*, Klein Decl. Exh. 52 (February 12, 2010 Summary of Expert Reports prepared by Guy Nordenson) at 1 (“WTC is the first and only high-rise steel building to ever suffer a global collapse *from a standard office contents fire.*”) (emphasis added); Exh. 53 (February 16, 2010 expert report of Dr. Colin Bailey at 2 (“The collapse of WTC7 is the only known case where a multi-story steel framed building has collapsed *due to standard office fires.* It was found that the collapse was due to design errors which significantly weakened the resistance of the structure to *standard office fires* and overall progressive collapse. . . . It was found that the initial failure was due to the instability of girder 79-44”) (emphasis added); Exh. 54 (February 15, 2010 expert report of Joseph Colaco of CBM Engineers) at 2 (“WTC 7 became the first high rise steel building to ever suffer a global collapse *from an office contents fire.*”) (emphasis added). *See also* Klein Decl. Exh. 55 (transcript of the oral argument on December 16, 2010 in connection with the summary judgment motions brought against Con Ed by 7WTCO. and Citigroup).

C. Con Ed's Acknowledgements that the Terrorist Attacks Caused the Destruction of Its Substation

58. In a December 2001 petition to defer emergency response and restoration costs following the “attacks on the World Trade Center”, Con Ed argued to the Public Service Commission: “There can be no question that the events of September 11 were extraordinary and unexpected. The damages to the Company’s energy infrastructure resulted from an unprecedented act of war on American soil.” *See* Klein Decl. Exh. 56 (December 21, 2001 Con Ed petition to the PSC) at 1, 2.

59. In lobbying Congress in November 2001 for legislation that would compensate it for its 9/11-related infrastructure losses, Con Ed stated: “As you know, the September 11th attack caused vital utility infrastructures to be significantly damaged or destroyed. . . . The known physical destruction included: * Complete destruction of two electricity substations located in the World Trade Center (WTC) Complex. . . .” *See* Klein Decl. Exh. 57 (November 9, 2001 Con Ed e-mail to the House Appropriations Committee) at 1.

60. In a February 2002 internal report of its response to the events of September 11, 2001, Con Ed stated: “The terrorist attack severely damaged Con Edison’s energy transmission and distribution infrastructure in Lower Manhattan,” including the “[c]omplete destruction of two electric substations located in Building #7 of WTC complex.” *See* Klein Decl. Exh. 58 (February 26, 2002 World Trade Center Report of Con Edison’s Emergency Response) at 4.

61. In a June 12, 2003 letter to Empire State Development commenting on HUD’s post-9/11 action plan, Con Ed stated: “Con Edison’s electric, gas, and steam systems sustained substantial direct damage as a result of the attack. The collapse of WTC Building 7 destroyed two substations” *See* Klein Decl. Exh. 59 (June 12, 2003 Con Ed letter to Lower Manhattan Development Corporation) at 2.

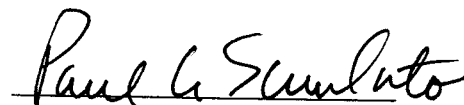
62. In a proof of loss Con Ed submitted to its insurance companies to recover for the loss of its substation equipment, Con Ed listed as the origin of its loss: “A terrorist attack on the World Trade Center, loss occurred on the 11th day of September 2001, the cause and origin of the said loss was terrorism.” See Klein Decl. Exh. 60 (May 14, 2004 Con Ed Sworn Statement in Proof of Loss).

63. Con Ed sought and obtained a \$63,807,100.00 federal tax refund for tax year 2000 by claiming a disaster loss relating to the terrorist attacks on September 11, 2001, which included losses claimed with respect to the destruction of the substation. *See* Klein Decl. Exh. 61 (Con Ed amended federal income tax return for the year 2000); Exh. 62 (related December 21, 2001 internal Con Ed memo).

64. Con Ed sought and obtained a \$17,675,834.00 state tax refund for tax year 2000 by claiming a disaster loss relating to the terrorist attacks on September 11, 2001, which included losses claimed with respect to the destruction of the substation. *See* Klein Decl. Exh. 63 (Con Ed response to data request made by Empire State Development on May 17, 2004).

65. Con Ed sought and obtained in excess of \$100 million in HUD funds appropriated for losses related to the terrorist attacks on September 11, 2001, which included losses claimed with respect to the destruction of the substation. *See* Klein Decl. Exh. 64 (October 15, 2010 expert report of Dennis Neier) at 8.

Dated: New York, New York
December 7, 2011

A handwritten signature in black ink, reading "Paul G. Scrudato". The signature is written in a cursive style with a horizontal line underneath it.

Robert H. Riley

Paul Scrudato

Donald A. Klein

SCHIFF HARDIN LLP

666 Fifth Avenue, 17th Floor

New York, New York 10103

(212) 753-5000

*Attorneys for The Port Authority of New York
and New Jersey*

NY51084738.14